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JAMES H. McKENNEY,
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Supreme Court of the United States.

THE GREAT SOUTHERN FIRE-PROOF HOTEL COMPANY,
PETITIONER,

vs.

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. JONES, JR., MARY F. LAUGHLIN, MARY McM. LAUGHLIN, MAGDALINE F. LAUGHLIN, WILLIS L. KING, HENRY A. LAUGHLIN, JAMES LAUGHLIN, JR., JAMES B. LAUGHLIN, CHARLES C. BRIGGS, ELIZA L. PHILLIPS AND BENJAMIN F. JONES AND WILLIAM L. JONES, TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF THOMAS M. JONES, JR., DECEASED, FOR WILLIAM L. JONES, MARY T. HILLIARD AND THOMAS M. JONES, JR., PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF JONES & LAUGHLINS, LIMITED,
RESPONDENTS.

PETITION and MOTION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

J. E. SATER,
HENRY GUMBLE,
Attorneys for Petitioner.

F. B. TOOTHAKER, Law Printer, 35-37 N. Third St., Columbus, O.

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RESPONDENTS.

Petition for Writ of Certiorari requiring the Circuit Court of Appeals for the Sixth Circuit, to certify to the Supreme Court for its review and determination the case of The Great Southern Fire Proof Hotel Company, Appellant, vs. Jones et al., Appellees.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The petitioner, The Great Southern Fire-Proof Hotel Company, respectfully shows to this Honorable Court as follows:

I.

Your petitioner is a corporation duly incorporated under the laws of the State of Ohio, and now is, and has ever been, since the date of its incorporation, a citizen of said state and of no other, having its residence and principal place of business in the city of Columbus in said state; that the respondents (appellees below), Benjamin F. Jones, George M. Lauglin, Benjamin F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Magdaline F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, Jr., deceased, for William L. Jones, Mary T. Hillard and Thomas M. Jones, Jr., are members of a limited partnership association, doing business under the firm name and style of Jones & Laughlins, Limited (the respondents being hereinafter designated for convenience as Jones & Laughlins, Limited), which association was organized under the act of the General Assembly of Pennsylvania, approved June 23, 1874, entitled, "An Act authorizing the formation of a partnership association in which the capital subscribed shall alone be responsible for the debt of the association, except under certain circumstances," each and all of which members of said association have their residence and place of business in the city of Pittsburg, in the state of Pennsylvania, and said limited partnership, or association, and the members thereof, and each of them are and for many years past have been, citizens of said state, and of no

other, residing in the city of Pittsburg, in said state of Pennsylvania.

II.

Your petitioner, on the tenth day of October, 1894, made and entered into a contract in writing with one William J. McClain, as principal contractor, wherein the said McClain, in consideration of the sum of three hundred and forty-five thousand dollars ($345,000), agreed to do and perform all the proper and necessary work and labor, and provide and furnish all proper and necessary materials, machinery, apparatus and tools for, and would construct and complete and make tenantable for your petitioner, a fire-proof hotel and opera house building, and thereupon the said William J. McClain did forthwith proceed towards the construction of said improvement on your petitioner's real estate in the city of Columbus, Franklin county, Ohio, known as In-Lots Nos. three hundred and fifty-two (352), three hundred and fifty-three (353), and three hundred and fifty-four (354), in said city.

III.

On or about the thirteenth day of December, 1894, the said Jones & Laughlins, Limited, made and entered into a contract in writing with the said William J. McClain, the principal contractor with your petitioner, for the erection and construction of the aforesaid fire-proof hotel and opera house buildings, wherein it was provided that the said Jones & Laughlins, Limited, should furnish the said William J. McClain nine hundred (900) tons of structural steel for the said fire-proof hotel and opera house

building, said structural steel to be furnished for the sum of thirty-two thousand five hundred and eight dollars ($32,508.00), f. o. b. cars, Columbus, Ohio, and further provided that if more than the nine hundred tons named in said contract be required, that the said Jones & Laughlins, Limited, should furnish the same at the rate of $1.81 per hundred pounds delivered in said city, or if a less amount be required than the said nine hundred tons the said Jones & Laughlins, Limited, would allow a reduction from the contract price at the rate of $1.81 per hundred pounds for the difference between the amount shipped and the nine hundred tons above mentioned. Said Jones & Laughlins, Limited, were to commence shipping said steel at once, and should complete the delivery thereof before August 1, 1895. The terms of payment for said steel was cash to be paid on the fifth day of each month following shipment (page 9, printed record, Exhibit A).

IV.

In accordance with the terms of said written contract between the said Jones & Laughlins, Limited, and the said William J. McClain, the said Jones & Laughlins, Limited, claimed to have furnished to the said McClain structural steel for said building alleged to be of the value of forty-three thousand two hundred ninety-six and 74-100 dollars ($43,296.74), which structural steel was used by the said William J. McClain in and about the construction and erection of said fire-proof hotel and opera house building, and payments were made by the said William J. McClain to the said Jones & Laughlins, Limited, on account of the structural steel so claimed to

have been furnished in the sum of thirty-one thousand eight hundred eighty-six and 72-100 dollars ($31,-886.72), leaving a balance as claimed by the said Jones & Laughlins, Limited, due to them from the said McClain, of eleven thousand four hundred ten and .02-100 dollars ($11,410.02).

V.

On the twenty-first day of April, 1896, at 4:50 o'clock, p. m., within four months after having furnished the last of said structural steel to the said William J. McClain, the said Jones & Laughlins, Limited, for the purpose of obtaining a mechanic's lien on the real estate, hotel building and opera house hereinbefore mentioned, and owned by your petitioner, duly filed with the recorder of Franklin county, Ohio, an affidavit purporting to contain an itemized statement of the amount and value of the merchandise claimed to have been furnished by them under their contract with the said McClain, with the credits thereon, and a copy of the said written contract between them and the said McClain, and also a description of the aforesaid premises, and caused said affidavit to be recorded in Book No. 9, pages 99, 100 and 101, of the Records of Liens of said Franklin county, Ohio, in which said affidavit the said Jones & Laughlins, Limited, claim that there was due them from the said McClain on account of structural steel furnished by them to him, the said sum of eleven thousand four hundred ten and .02-100 dollars ($11,410.02), with interest from January 28, 1896, and that they have a mechanic's lien on the aforesaid premises of petitioner for said amount.

VI.

Your petitioner further says that at the time of the making of the contract between your petitioner and the said McClain, as principal contractor, for the erection and construction of said fire-proof hotel and opera house building, and also at the time of the filing by the said Jones & Laughlins, Limited, of their aforesaid affidavit to procure a mechanic's lien on the aforesaid premises, in said recorder's office, and at all intervening times, the mechanics' lien law of Ohio was embodied in Section 3184 of the Revised Statutes of Ohio (91 Ohio Law, p. 135), Section 3185, Revised Statutes of Ohio (Giaque, Bates, Smith and Benedict Edition), and Section 3185*a*, Revised Statutes of Ohio (91 Ohio Laws, p. 137), which said sections are as follows, to wit:

> "Sec. 3184. A person who performs labor, or furnishes machinery or material for constructing, altering or repairing a boat, vessel or other water craft, or for erecting, altering, repairing or removing a house, mill, manufactory, or any furnace or furnace material therein, or other building, appurtenance, fixture, bridge or other structure, or for the digging, drilling, plumbing, boring, operating, completing or repairing of any gas well, oil well or any other well, or performs labor of any kind whatsoever, in altering, repairing or constructing any oil derrick, oil tank, oil or gas pipe line, or furnishes tile for the drainage of any lot or land by virtue of a contract with, or at the instance of the owner thereof or his agent, trustee, contractor or subcontractor, shall have a lien to secure the payment of the same upon such boat, vessel or other water craft, or upon such house, mill, manufactory, or other building or appurtenance, fixture, bridge or other structure, or upon such gas well, oil well or any other well, or upon such oil derrick, oil tank, oil or gas pipe line, and upon the material and machinery so furnished,

and upon the interest, lease-hold or otherwise, of the owner in the lot or land on which the same may stand, or to which it may be removed."

"Sec. 3185. Such person in order to obtain such lien, shall, within four months of the time from performing such labor, or furnishing such machinery or material, file with the recorder of the county where the labor was performed, or the machinery or material furnished, an affidavit containing an itemized statement of the amount and value of such labor, machinery, or material, or any part thereof, with all credits and offsets thereon, a copy of the contract, if it is in writing, a statement of the amount and times of payment to be made thereunder, and a description of the land on which the gas well, oil well, or other wells are situated, or the land on which the house, mill, manufactory, or other buildings, or appurtenances, fixture, bridge, or other structure may stand, or to which it may be removed; and the same shall be recorded in a separate book to be kept therefor, and shall operate as a lien from the date of the first item of the labor performed, or the machinery or material furnished upon or toward the property designated in the preceding section, and the interest of the owner in the lot or land on which the same may stand, or to which it may be removed, for six years from and after the date of the filing of such attested statement. If an action be brought to enforce such lien within that time the same shall continue in force until the final adjudication thereof; and there shall be no homestead or other exemption against any lien under the provisions of this chapter."

"Sec. 3185a. In all cases where the labor, material or machinery referred to in Sections 3184 and 3185, shall be furnished by any person other than the original contractor, with such owner or his agent or trustee, the lien shall not exceed the actual value of the labor, material or machinery so furnished, and the aggregate amount of liens for which the property may be held shall not, in the absence of fraud or collusion between the owner and original contractor, exceed the amount of the price agreed upon

between the owner and original contractor for the performing of such labor and the furnishing of such material and machinery. Provided, if it shall be made to appear that the owner and contractor, for the purpose of defrauding subcontractors, material-men or laborers, fixed an unreasonably low price in the original contract for any work or material for which a lien is given under section thirty-one hundred and eighty-four, the court shall ascertain the difference between such fraudulent contract price and a fair and reasonable price therefor, and such subcontractors, material-men and laborers shall have a lien to the amount of such fair and reasonable price so ascertained."

VII.

On the ninth day of January, 1897, the said Jones & Laughlins, Limited, in their partnership name and not as individuals, filed their bill of complaint in the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio, in the Sixth Judicial Circuit, against the said The Great Southern Fire-Proof Hotel Company, and others to enforce its alleged mechanics' lien on the said real estate of the said hotel company, alleging among other things, the execution of their contract with the said McClain; the furnishing of structural steel to him for said building; the sum still due them; the insolvency of the said McClain; the filing of their affidavit with the recorder of said county, to procure a mechanics' lien, and praying that their alleged claim against the said McClain be declared a valid and subsisting lien on the premises of the said hotel company; that the liens on said property be marshaled, and the said premises sold and their claim satisfied out of the proceeds of such sale, and for all further proper relief.

Thereafter the solicitors of said hotel company on its

behalf, filed a demurrer to said bill of complaint, on the ground that said bill did not make or state such a cause as entitled said partnership to the recovery or relief sought and prayed for therein.

On the third day of May, 1897, the Honorable George R. Sage, District Judge of said court, found said demurrer well taken, and did allow and sustain the same, and the complainants, not desiring to amend their respective pleadings, the same were dismissed at their costs. The decision so rendered is found in the 79 Fed. Rep., 477.

Thereafter the said Jones & Laughlins, Limited, prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, and on the sixteenth day of April, 1898, the said last named court rendered a judgment reversing the judgment of the said Circuit Court for the Southern District, Eastern Division, and remanded said cause to said last named court with directions to overrule said demurrer and require said hotel company to answer. The decision of the said Circuit Court of Appeals is reported in 86 Fed Rep., p. 370.

Thereupon the hotel company filed its petition and motion in this honorable court, praying that a writ of certiorari be issued and directed to the said United States Circuit Court of Appeals, commanding it to certify to this court a full and complete transcript of the record and of all the proceedings of said Circuit Court of Appeals in the case appealed thereto by the said Jones & Laughlins, Limited, against the said hotel company, and that said cause be reviewed and determined by this court, and for a reversal of the judgment of the said Circuit Court of Appeals in said cause and for all proper relief.

Thereupon said cause was certified to this court, and

on the ninth day of April, 1900, the judgment of the said Circuit Court of Appeals and the said Circuit Court were reversed, and the said cause was remanded to said Circuit Court with direction that the said Jones & Laughlins, Limited, should be permitted to proceed to a final hearing providing they were able to amend their pleadings upon the subject of citizenship of the parties so as to come within the rule announced by this honorable court. The decision so rendered by this honorable court is reported in the 177 U. S., 449.

VIII.

On the twenty-first day of June, 1900, the said Benjamin F. Jones, George M. Laughlins, Benjamin F. Jones, Jr., Mary F. Laughlins, Mary McM. Laughlins, Willis L. King, Henry A. Laughlins, James Laughlins, Jr., James B. Laughlins, Charles C. Briggs, Eliza L. Phillips, Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hilliard and Thomas M. Jones, partners, doing business under the firm name and style of Jones & Laughlins, Limited, as individuals, filed their amended bill of complaint in the Circuit Court of the United States for the Eastern Division, and the Southern District of Ohio, in the Sixth Judicial Circuit against the Great Southern Fire-Proof Hotel Company and certain others who claim liens on said premises, which amended bill recites that each and every of said respondents is a citizen and resident of the state of Pennsylvania, and otherwise contains the same averments and prays the same relief as the original bill of complaint mentioned in paragraph VII, *supra*.

The solicitors of the said hotel company on the seventeenth day of July, 1900, filed a demurrer to said amended bill of complaint for the same reason, and on the same ground and in the same form as were set forth and as appear in the demurrer filed by said hotel company to the original bill filed by Jones & Laughlins, in their partnership name, and as recited in paragraph VII, *supra*. The Circuit Court, feeling itself bound by the decision of the Circuit Court of Appeals, overruled said demurrer, to which ruling your petitioner excepted.

IX.

The Great Southern Fire-Proof Hotel Company, believing the respondents had not complied with the statutory requirements necessary to procure a lien, and also that the lien asserted on account of the unconstitutionality of the Ohio Mechanics' Lien law, is invalid, filed its answer to the amended bill and admitted the filing with the Recorder of Franklin county, Ohio, of what purports to be an affidavit to obtain a mechanics' lien, and alleged that said affidavit contains no itemized statement of the amount and value of materials furnished and labor performed, but merely states that on certain days said McClain bought of respondents merchandise with a value set opposite to each item, and does not state the character, kind or amount of the merchandise so bought, and that they did not have or acquire a mechanic's lien upon the real estate of said hotel company.

Said hotel company also averred that the affidavit mentioned in said amended bill was filed and their alleged mechanics' lien upon the Great Southern Fire-Proof Hotel Company's said real estate was claimed pursuant

to and under the right which was conferred by Sec. 3184 of the Revised Statutes of Ohio (91 O. L., 135), Sec. 3185, R. S. of Ohio (Giaque's, Bates' or Smith & Benedict's edition), and Sec. 3185*a*, R. S. of Ohio (91 O. L., 135), which statutes are so far as they attempt to give a lien for materials or labor obtained by the contractor from a sub-contractor, materialman or laborer, unconstitutional and void in that they violate the inalienable right of enjoying liberty and acquiring property granted by Sec. 1 of the Bill of Rights of the Constitution of the State of Ohio; that on December 8, 1896, the Supreme Court of the state of Ohio, being the highest court of the state, determined and adjudged that said statutes, so far as they give a lien on the property of the owner to sub-contractors, laborers and those who furnish machinery, material, or time to the contractor, were unconstitutional and void, because they contravene and violate the provisions of said first section of said Bill of Rights of the Constitution of Ohio, in the cases of Palmer & Crawford v. Tingle, and Young v. Lion Hardware Company, 55 O. S. Rep., 423.

That said decision was rendered in cases which involved alleged rights under state statutes and that it determined the validity of the state statutes under the constitution of the state of Ohio, and that the United States Courts should follow the decision of the Supreme Court of Ohio.

The said The Great Southern Fire-Proof Hotel Company further averred that it seeks relief against the attempt on the part of the complainants to enforce against it the said statutes of Ohio, because the operation of said statutes, if permitted, would take from said company its

property without due process of law, and deny to it the equal protection of the law, in contravention and violation of the provisions of the Constitution of the United States, and are especially contrary to and in violation of Sec. 1 of Art. XIV, of the amendments to the Constitution of the United States, and prayed the court to decree that the aforesaid sections of the Revised Statutes of Ohio are unconstitutional and void, for a dismissal without costs and other proper relief.

The complainants filed their replication to such answer, and thereafter the respondents (complainants below) and The Great Southern Fire-Proof Hotel Company entered into an agreed statement of facts or stipulation which fully appears on pages 53 to 59, printed record.

X.

The said case in the said Circuit Court of the United States for the Southern District of Ohio, Eastern District of Ohio, Eastern Division, was heard before and decided by the Honorable Albert C. Thompson, District Judge of the United States Court for the District of Ohio, upon the amended bill of complaint, the answer of The Great Southern Fire-Proof Hotel Company to the amended bill of complaint, the replication of complainant, and the agreed statement of fact and stipulations heretofore mentioned, and the said court did on the twentieth day of August, 1901, render a judgment therein, and did find that the respondents have a valid and subsisting lien upon said hotel company's premises from and after the sixteenth day of April, 1895, being the date on which the first item of material mentioned in said affidavit was furnished; that there is due to respondents by virtue of said

lien the sum of $11,410.02, with interest thereon from the twenty-eighth day of January, 1896, amounting in all at the date of such decree to $15,158.21; that said amount is due on account of said lien, and materials furnished in and about the construction of the building upon said premises hereinbefore described, and that no part of said amount has ever been paid and that the respondents are entitled to have said lien foreclosed, and did order and decree that unless the costs of said suit, and the amount found due the plaintiffs, with interest from the nineteenth day of June, 1901, shall be paid within ten days, the said Hotel Company's equity of redemption in said premises should be foreclosed, and an order should issue to the marshal of this district, directing him to appraise, advertise and sell said premises according to law.

To each and every of which said findings, orders and decrees of the court The Great Southern Fire-Proof Hotel Company excepted, and gave notice of and prayed an appeal from each and every of said findings, orders and decrees to the United States Circuit Court of Appeals for the Sixth Circuit, and gave notice for its desire to give a supersedeas bond to stay execution, order of sale and other proceedings on the decree herein rendered until the final determination of such appeal; and such appeal was granted and the court allowed an appeal to said The United States Circuit Court of Appeals for the Sixth Circuit, and fixed the amount of said appeal bond.

XI.

On the twentieth day of August, 1901, the petition of appeal of the said The Great Southern Fire-Proof Hotel Company, against the respondents, together with its

assignment of error, was filed in the clerk's office of said Circuit Court, and bond was given, and thereupon a certified transcript of the record of all proceedings of said Circuit Court in said case was filed in The United States Circuit Court of Appeals for the Sixth Circuit, and said case was entered and docketed as The Great Southern Fire-Proof Hotel Company, appellant, against Benjamin F. Jones, et al., appellees. No. 1034.

XII.

The assignment of errors filed on behalf of the said The Great Southern Fire-Proof Hotel Company to the judgment rendered in favor of Jones & Laughlins, Limited, omitting those which relate purely to questions of fact, and arise on the evidence, was as follows:

I. The United States Circuit Court for the Southern District of Ohio, Eastern Division, erred in overruling the demurrer interposed by the said The Great Southern Fire-Proof Hotel Company to the amended bill of complaint of said Jones & Laughlins, Limited.

II. The said court in holding and decreeing the mechanic's lien law of Ohio, especially each and every section thereof known as sections 3184 (91 O. L., page 135), 3185 (Bates Annotated Ohio Statutes), and 3185a (91 O. L., page 137), under which said sections the said The Jones & Laughlins, Limited, seek to enforce the purported lien set out in their amended bill of complaint, to be constitutional, and not in contravention and violation of section one (1) of the Bill of Rights of the Constitution of the State of Ohio, and of section one (1), Article fourteen (14), of the Constitution of the United States.

III. The said court erred in not following the decision

of the Supreme Court of the state of Ohio in the cases of Palmer & Crawford v. Tingle, and Young v. Lion Hardware Company, 55 O. S., 423, holding the said mechanic's lien law unconstitutional, to wit, Secs. 3184 (91 O. L., p. 135), 3185 (Bates' Annotated Ohio Statutes), and 3185a (91 O. L., p. 137), under which the said Jones & Laughlins, Limited, claimed and sought to enforce the purported lien set out in the amended bill of complaint, which said decision was rendered prior to the commencement of this action. * * *

VII. The said court erred in rendering a judgment and decree in said cause in favor of Jones & Laughlins, Limited, and against the said The Great Southern Fire-Proof Hotel Company.

VIII. The judgment and decree rendered by said court should have been rendered in favor of said The Great Southern Fire-Proof Hotel Company, and against The Jones & Laughlins, Limited.

The Great Southern Fire-Proof Hotel Company therefore prayed that the said decree and holdings of said Circuit Court of the United States, Southern District of Ohio, Eastern Division, be reversed and that said court may be directed to enter a decree dismissing the amended bill of complaint, and for all such other orders as the justice and equity of this cause may require.

XIII.

The said case came on to be heard on the appeal above mentioned before the said Circuit Court of Appeals on the seventh day of May, 1902, before the Honorable William R. Day, Horace H. Lurton and Henry F. Severens, and on the third day of June, 1902, the said

court rendered a judgment affirming the said judgment of the Circuit Court in favor of Jones & Laughlins, Limited.

XIV.

A certified copy of the entire record in the said case in the said Circuit Court of Appeals is furnished and filed herewith in conformity with Rule 37, of this Honorable Court relating to cases from Circuit of Appeals.

XV.

Your petitioner is advised and believes that the said judgment of the United States Circuit of Appeals in the said case is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination under and in conformity with the provisions of the Sixth Section of the act of Congress entitled, "An Act to establish Circuit Court of Appeals, and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, the said case being made final in the said Circuit Court of Appeals by the said Act.

The judgment of the said Circuit Court of Appeals is erroneous in that said mechanic's lien law was held to be constitutional and said judgment was rendered in favor of the said Jones & Laughlins, Limited, whereas said law should have been held unconstitutional and said judgment should have been rendered in favor of your petitioner, for the following reasons, and on the following grounds, to wit:

(a) The mechanic's lien law of Ohio is unconstitu-

tional in that it denies to the owner of real estate the right of acquiring, possessing and protecting property, and the right of contract, in relation thereto, of making and enforcing contracts, of fixing and limiting the consideration therefor, and the manner and time of payment, and is not for the equal protection and benefit of the people, and therefore contravenes Sections 1 and 2 of the Bill of Rights (Art. 1, Constitution of Ohio), which sections are as follows:

"Sec. 1. All men are by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety.

"Sec. 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit," etc.

(b). It deprives the real estate owner of his property without due process of law, and of the equal protection of the laws, abridges the privilege of citizens of the United States as regards the right of contract, and is therefore unconstitutional, and in conflict with Sec. 1, Art. XIV., of the Constitution of the United States, which recites: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(c). The Circuit Court of Appeals should have followed the decision of the Supreme Court of Ohio, rendered before the said Jones & Laughlins, Limited, insti-

tuted any suit, and holding said law unconstitutional, because there was not presented to said Circuit Court any question as to negotiable paper, municipal bonds, general commercial law, or general jurisprudence, or any matter of interstate transportation and commerce, or any question other than the constitutionality of a law of the state of Ohio having no extra territorial effect.

(d). The said Circuit Court of Appeals should have followed the decision of the Supreme Court of Ohio holding said law unconstitutional for the reason that the Supreme Court of Ohio has at all times recognized and enforced the doctrine that the rights of material-men and sub-contractors are limited and defined by and dependent upon the contract between the owner and the original contractor, and are to be worked out through it (Copeland vs. Manton, 22 O. S., 398; Dunn vs. Rankin, 27 O. S., 132; Palmer & Crawford vs. Tingle, 9 O. C. C., 708; Stark vs. Slemmons, 54 O. S., 435; Palmer & Crawford vs. Tingle, and Young vs. Lyon Hardware Co., 55 O. S., 423; Hampson vs. The State, 9 O., 318, 319), which construction of the mechanic's lien law of Ohio obtained at the time the said Jones & Laughlins, Limited, made their contract with McClain, and at the time the said McClain contracted with your petitioner, nor has there at any time been a change made by the Supreme Court of Ohio in judicial construction as to the mechanic's lien law, or laws of said state; and during the time within which the said Jones & Laughlins, Limited, were furnishing labor and material to the said William J. McClain, to be used in said hotel and opera house building; the said case of Palmer & Crawford vs. Tingle, and Young vs. The Lyon Hardware Company, in which

the constitutionality of the said mechanic's lien law was called in question, was pending in the courts of Ohio, and the decision rendered therein by the Circuit Court of Putnam county, Ohio (9 O. C. C., 708), was made at the November Term of said court in 1895, and the said Jones & Laughlins, Limited, were apprised of the fact that the constitutionality of said law was questioned. The decision of the said Circuit Court of Appeals is in conflict with the decision of the Supreme Court of Ohio, and the doctrine relating to the mechanic's lien law which had uniformly been recognized by said Supreme Court in said state.

The importance and gravity of the questions raised and presented by the petitioner's demurrer to the bill and the aforesaid answers will be recognized when it is stated that under the provisions of said mechanic's lien law a lien is given to the material-men and sub-contractor without notice to the owner, at any time within four months from the completion of the improvement on the owner's real estate or the furnishing of labor or material, and in any amount not in excess of the original contract price between the owner and such principal contractor, regardless of the state of the account between the owner and such principal contractor, and thus the owner may be compelled to pay for his improvement in whole or in part a second time, and to a person with whom he sustains no contractural relations, although the owner may have acted in strict compliance with his contract, paid in advance, or as his improvement progressed; that such law has no application to any or all kinds of contracts but is limited in its operation to a special class of contracts, viz.: To those made by persons who labor or furnish materials

for the objects named in the act and thus discriminates in favor of a special class of citizens to the exclusion of all others; that such law places upon the owner of real estate a burden that is not borne by the owner of any other class of property; that such law denies to the owner of real estate the right to enjoy and possess property and contract in relation thereto as he may deem best; that such law denies the owner of real estate the right to contract with reference to his property other than a monied consideration, and deprived him of the right of fixing the amount, or medium of payment for improvements made on his property, in that he may be compelled to pay a second time, as aforesaid, and may be compelled to pay in money, although he may have contracted to pay in some other commodity; that such law makes the owner of real estate, by force of legislation security for the original contractor that such original contractor will perform his contract and thus defeats the owner in the enjoyment of his property; that such law divests the owner of his title without any act, tort or default on his part, and thus deprives him of the equal protection of the laws and of his property without due process of law; that such law tends to drive small and insolvent contractors out of business, and leaves the contract business in the hands of those who are rich enough to guarantee their contracts; that such law compels the owner of property to pay any claim or claims up to the full extent of twice the contract price, and gives him no recourse except an action by damages against the original contractor.

XVI.

Your petitioner is advised and believes that the judgment so rendered by the Circuit Court of Appeals is not in harmony with the decision announced by this Honorable Court in Gulf, Colorado & Sante Fe R. R. Co. v. Ellis, 165 U. S., 150, in that said mechanic's lien law deprives owners of their property without due process of law, and of the equal protection of the law, and makes a classification that is not based on any reasonable ground and makes a mere arbitrary selection of one class of citizens to the exclusion of all others.

This Honorable Court, in the decision announced in Gulf, Colorado & Sante Fe R. R. Co. v. Ellis, promulgated the same doctrine as announced in Coal Co. vs. Rosser, 53 O. S., 12; State vs. Ferris, 53 O. S., 314, and Young vs. The Lyon Hardware Company, 55 O. S., 423, and relied largely on the same authorities as were cited by the Supreme Court of Ohio to sustain its decision in said cases of Coal Co. vs. Rosser, and Young vs. The Lyon Hardware Co.

XVII.

Your petitioner thus respectfully submits that the question upon the legal and just construction and effect of the said mechanic's lien law of Ohio involved in and presented by the several demurrers and answers of your petitioner in said cases should be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the court of the merits of said question on the part of the petitioner, and the said Jones & Laughlins, Limited, and further represents that this petition is not interposed for delay.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court directed to The United States Circuit Court of Appeals for the Sixth Circuit, commanding said court to certify and send to this court on a day to be therein designated a full and complete transcript of the record and of all proceedings of said Circuit Court of Appeals in the said cases therein pending, entitled:

The Great Southern Fire-Proof Hotel Company, appellant, against Benjamin F. Jones, George M. Laughlin, Benjamin F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Magdalaine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, Jr., deceased, for William L. Jones, Mary J. Hillard and Thomas M. Jones, Jr., partners, doing business under the firm name and style of Jones & Laughlins, Limited, having their principle office and place of transacting business in the city of Pittsburg, in the state of Pennsylvania, appellees. No. 1034.

That said case may be reviewed and determined by this court as provided for in Section 6, of an act of Congress entitled, "An Act to establish Circuit Court of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3, 1891, and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem proper and in conformity with the said act, and that the said judgment of the Circuit Court of Appeals in the said

case, and every part thereof may be reversed by this Honorable Court, and your petitioner will ever pray, etc.

J. E. SATER,
HENRY GUMBLE,
Attorneys and Counsellors for Petitioner.

The State of Ohio, Franklin County, ss.:

J. E. Sater being first duly sworn, says that he is one of the attorneys and of counsel for The Great Southern Fire-Proof Hotel Company, the petitioner above named, and as such had personal charge for it of the case in the foregoing petition mentioned in the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio, and in The United States Circuit Court of Appeals for the Sixth Circuit, and that he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

J. E. SATER.

Sworn to before me and subscribed in my presence this —— day of December, A. D. 1902.

[SEAL.] L. F. SATER,
Notary Public in and for Franklin County, Ohio.

SUPREME COURT OF THE UNITED STATES.

The Great Southern Fire-Proof Hotel Company,
Petitioner,

vs.

Benjamin F. Jones, George M. Laughlin, Benjamin F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Magdalaine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, Jr., deceased, for William L. Jones, Mary J. Hillard and Thomas M. Jones, Jr., partners, doing business under the firm name and style of Jones & Laughlins, Limited,

Respondents.

Motion for an Order that a Writ of Certiorari Issue.

The Great Southern Fire-Proof Hotel Company, the petitioner herein moves the court for an order that this court issue a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Judicial Circuit directing that court to certify to this court a copy of the records in that court of the case wherein said The Great Southern Fire-Proof Hotel Company are appellants, and the said Jones & Laughlins, Limited, are appellees; which case is found on the dockets of said court as case No. 1034, for the reasons and upon the grounds, to wit:

(1) The mechanic's lien law of Ohio, under which the said respondents asserted a lien is unconstitutional and void and in conflict with Secs. 1 and 2 of the Bill of Rights of the Constitution of said state.

(2) The Supreme Court of Ohio, prior to the commencement of any action by the respondents, had declared said law to be unconstitutional in the cases of Palmer & Crawford vs. Tingle, and Young v. The Lion Hardware Co., 55 O. S., 423.

(3) The Federal Court should follow the decision of the Supreme Court of Ohio.

(4) The said mechanic's lien law of Ohio is in violation of Sec. 1, Art. XIV, of the Constitution of the United States in that it interferes with the right of contract, deprives the petitioner of its property without due process of law, and of the equal protection of the law.

(5) The decision rendered by the Circuit Court of Appeals and the Circuit Court are in conflict with the settled doctrine in Ohio as promulgated by its legislature and announced by its courts regarding mechanic's liens and the rights of subcontractors under the mechanic's lien laws of said state.

(6) The respondents were apprised soon after entering into their contract with said McClain, and before any considerable material was furnished to him by them, that the constitutionality of the mechanic's lien law was denied and was contested in the courts of said state, and that its provisions were contrary to and in violation of the settled policy and doctrine of said state as promulgated by its legislature and announced by its courts.

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(7) The question involved is the same as when this cause was heretofore certified to this court, which question was not, for want of proper parties, decided on the final hearing in this court.

(8) For other reasons appearing in the petition for a writ of *certiorari* filed herein.

J. E. SATER,
HENRY GUMBLE,
Attorneys for Petitioner.

FILE COPY.

FILED
DEC 11 1902
JAMES H. McKENNEY,
Clerk.

THE SUPREME COURT OF THE UNITED STATES.

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY.
Petitioner,

vs.

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. JONES, JR., MARY F. LAUGHLIN, MARY McM. LAUGHLIN, MAGDELAINE F. LAUGHLIN, WILLIS L. KING, HENRY A. LAUGHLIN, JAMES LAUGHLIN, JR., JAMES B. LAUGHLIN, CHARLES C. BRIGGS, ELIZA L. PHILLIPS and BENJAMIN F. JONES and WILLIAM L. JONES, trustees under the last will and testament of THOMAS M. JONES, JR., deceased, for WILLIAM L. JONES, MARY J. HILLIARD and THOMAS M. JONES, JR., partners doing business under the firm name and style of JONES & LAUGHLINS, Limited;
Respondents.

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ON PETITION FOR A WRIT OF CERTORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS OF THE SIXTH CIRCUIT.

J. E. SATER,
HENRY GUMBLE,
Solicitors for Petitioner, The Great Southern Fire Proof Hotel Company.

THE SUPREME COURT OF THE UNITED STATES.

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY.

Petitioner,

vs.

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. JONES, JR., MARY F. LAUGHLIN, MARY McM. LAUGHLIN, MAGDELAINE F. LAUGHLIN, WILLIS L. KING, HENRY A. LAUGHLIN, JAMES LAUGHLIN, JR., JAMES B. LAUGHLIN, CHARLES C. BRIGGS, ELIZA L. PHILLIPS and BENJAMIN F. JONES and WILLIAM L. JONES, trustees under the last will and testament of THOMAS M. JONES, JR., deceased, for WILLIAM L. JONES, MARY J. HILLIARD and THOMAS M. JONES, JR., partners doing business under the firm name and style of JONES & LAUGHLINS, Limited;

Respondents.

ON PETITION FOR A WRIT OF CERTORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS OF THE SIXTH CIRCUIT.

BRIEF FOR THE PETITIONER.

This case was before this Court heretofore, having been brought here by the same petitioner on its application for a writ of *certiorari*. The decision of the Court in that case is found The Great Southern Fire Proof Hotel Company v. Jones & Laughlins, Limited, 177 U. S., 449. The case was decided on a question of parties. The same conditions and reasons now exist for the granting of an application for a writ of *certiorari* as existed in the original case.

The Supreme Court of Ohio held the Mechanic's Lien Law of 1894 unconstitutional. After the rendering of that decision a suit was brought by Jones & Laughlins, Limited, in their partnership name, in the United States Circuit Court, Southern District of Ohio, Eastern Division, to enforce a mechanic's lien on the Hotel Company's property. The Circuit Court coincided with the Supreme Court of the State. 79 Fed. Rep. 477. On appeal the United States Circuit Court of Appeals of the Sixth Circuit reversed the Circuit Court, (86 Fed. Rep. 370), thus producing a conflict of decision as between the State and Federal Courts and as between the Federal Courts themselves. The case was then, on the Hotel Company's application, certified up to this Court by its direction. After it was remanded by this Court, such change was made as to parties and averments as to citizenship as gave jurisdiction to the Circuit Court and that Court, feeling that it was concluded by the decision of the Circuit Court of Appeals, on the constitutional question involved, followed that Court instead of the Supreme Court of Ohio. It also decided against the Hotel Company on the questions of fact involved. The Hotel Company then carried the case to the Circuit Court of Appeals, which affirmed the decision which had originally been rendered by it on the constitutional question, and also decided certain questions of fact.

The Hotel Company now asks that a writ of *certiorari* issue to the United States Circuit Court of Appeals of the Sixth Circuit, requiring it to certify the case again to this Court for final determination. There is also a diversity of decision between the State and the Federal Courts, on the constitutional question involved, which question is the one this Court is now asked to determine.

This Court has, on several cases, decided when, and for what reason, it may issue a writ of *certiorari*.

(1) It may be done in a case which is pending in the Court of Appeals.

(2) The case must belong to those classes of cases in which the decision of the Court of Appeals is declared a finality.

(3) It must be a case in which a question of "peculiar gravity," or of "general importance," or of "uniformity of decision" is involved.

In the case of Forsyth v. City of Hammond, 166 U. S. 506, 514, is found a statement of the rule announced by this Court. The opinion declares: "We reaffirm in this case the proposition heretofore announced, to-wit: that the power of this Court in *certiorari* extends to every case pending in the Circuit Court of Appeals, and may be exercised at any time during such pendency, provided, the case is one which, but for the provision of the statute, would be finally determined in that Court. And further, that while this power is co-extensive with all possible necessities and sufficient to secure to this Court a final control over the ligitation in all the Courts of Appeal, it is a power which will be sparingly exercised, *and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding a conflict between two or more Courts of Appeal or between Courts of Appeal and the Courts of a State, * * * * demands such exercise.*"

Again in the American Construction Company v. Jacksonville, L. & K. W. Ry. Co., 148 U. S. 372, 383, the resolution of this Court was, that the power to issue the writ of *certiorari* would be exercised "only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision."

In Cunard Steamship Co. v. Fabre, 13 Sup. Ct. Rep. 1045, the writ was issued because one of the three Circuit Judges composing the Court of Appeals, dissented from the decree which reversed a decree of the District Judge.

In Forsyth v. Hammond, before cited, the controversy in the State Court was about the annexation of a few hundred acres of land to the city of Hammond, Indiana. The lower Court of that state, upon the verdict of a jury, decreed that the land should be annexed to the city of Hammond. Part of the land annexed belonged to Mrs. Forsyth. The city levied taxes to the amount of $3500.00 on her land. She filed a bill in equity in the Circuit Court of the United States for the District of Indiana, praying for an injunction restraining the collection of the taxes. The Court refused to award the injunction and dismissed her bill. She appealed to the United States Circuit Court of Appeals. That Court reversed the decision of the Circuit Court and remanded the case to that Court for further proceedings.

Before Mrs. Forsyth filed her bill in the United States Court she, and the owners of the rest of the annexed land, appealed from the judgment of the lower State Court to the Supreme Court of Indiana. The Court affirmed the decision of the lower Court, and this Court's decision was rendered before the decisions of either of the United States Courts was announced.

In both of these cases, in the one prosecuted in the United States, and in the one prosecuted in the State Courts, the sole issue was as to the validity of the annexation proceedings. The decision of the State Courts and of the United States Circuit

Court was that the proceedings were valid; the decision in the United States Court of Appeals was that they were invalid. There was a categorical contradiction between the decisions of the United States Circuit Court and the Supreme Court of Indiana, on the one side, and the decision of the United States Circuit Court of Appeals on the other side.

The pertinency of a quotation from the opinion in Forsyth v. Hammond, *supra*, page 515, disclosing the reasons for issuing the writ of *certiorari*, is obvious. Justice Brewer said:

> "Among the considerations thus suggested are those which indicate why, in this case, the Court properly exercised its power and issued the writ of *certiorari*. There was a conflict between the decision of the Circuit Court of Appeals for the Seventh Circuit, and the Supreme Court of Indiana. The latter Court had declared that the proceedings by which the contiguous territory was annexed to the city of Hammond were legal, and therefore that that territory was to be considered by all the officers of the State of Indiana as within the territorial limits of the city. The United States Circuit Court of Appeals, by its decision in this case had declared that such annexation proceedings were invalid, and that the property of this petitioner was not within the city limits. * * * All the unfortunate possibilities of conflict and collision which might arise from those adverse decisions were suggested when this application for *certiorari* was made, and although no final decree had been entered, it seemed to us a duty to bring the case and the question here for examination at the earliest possible moment."

The parallel between this case and the case at bar is perfect. There is no distinction whatever between the relevant master facts of the two cases.

In the case at bar the decision of the Supreme Court of Ohio was that the Mechanic's Lien Law referred to in the petitioner's

petition, was unconstitutional; and the decision of the United States Circuit Court was exactly in accord with that decision. The decision of the United States Circuit Court of Appeals was in positive conflict with those decisions. The decision of the Supreme Court of the State was rendered before the decisions of either of the United States Courts was rendered.

The only distinction between the two cases is, that in the case at bar the plaintiffs and the cross-petitioner were not parties to the case in which the Supreme Court of the State pronounced the Mechanic's Lien Law unconstitutional. But that distinction does not affect the parallel between them on principle and reason.

It is respectfully submitted, borrowing from the opinion of Justice Brewer, that the "unfortunate possibilities of conflict and collision which might arise from these adverse decisions," are enough to entitle this petitioner to have the case removed to this Court for examination, and are a sufficient reason why this Court should issue a writ of *certiorari* in this case..

It will probably be claimed that the matter involved in these suits is exclusively one of private interest. But that is not the true interpretation of these cases. The fact that there is a conflict between the decision of the Supreme Court of the State of Ohio, and the decision of the United States Circuit Court, on the one side, and the decision of the Circuit Court of Appeals, on the other side, renders the matter, involved one of public interest. The fact that there are only a few cases now pending in which this collision of decisions has occured, does not prove that there may not be oth r cases in which the same conflict may arise. It is possible that there yet may be other cases. This Court has a right, probably it is its duty, to consider this possibility.

The conflict which exists between these decisions, as shown by the record, makes the question involved one of gravity and importance — just such a question as has heretofore persuaded, and ought now to persuade, this Court to issue a writ of *certiorari*.

In Forsyth v. The City of Hammond, which we have cited, there was just as much reason for the contention that the matter involved was only of private interest, as there is in these cases. The Court said that by the decision of the Circuit Court of Appeals there "would be a tract of a few hundred acres of land within the exterior boundaries of the City of Hammond * * * withdrawn from the city's jurisdiction, and in fact excepted from its territorial limits." On the other hand, the Court said, the Supreme Court of Indiana had declared that this tract of land *was* within the city's jurisdiction and territorial limits. Now, nobody was interested in this matter except the owner of the tract of land, on the one side, and the city of Hammond, a municipal corporation, on the other side.

The controversy did not involve the whole state of Indiana; it did not involve the whole population of the state of Indiana. It did not even involve the whole population of one county.

We again insist that the necessity of avoiding a conflict between the Circuit Court of Appeals, and the Supreme Court of the State, is a matter of public interest, and not of private interest; and that this is an answer to any criticism that may be made that these causes only involve a matter of private interest.

We assume that a discussion of the merits of the controversy in the case and of the decision of the Circuit Court of Appeals would not be relevant to the brief on this application for a writ

of *certiorari*, and we have therefore refrained from a discussion of these matters.

Respectfully submitted,

J. E. SATER,

HENRY GUMBLE,

Solicitors for Petitioner, The Great Southern Fire Proof Hotel Company.